

STATE OF MICHIGAN
COURT OF APPEALS

JOHN R. MANCE, M.D., Conservator for the Estates
of JESSICA MANCE, JOHN MANCE, SAMUEL
MANCE, and PAUL MANCE,

Plaintiff-Appellant,

v

NANCY MANTZ,

Defendant-Appellee.

JOHN R. MANCE, M.D., Conservator for the Estates
of JESSICA MANCE, JOHN MANCE, SAMUEL
MANCE, and PAUL MANCE,

Plaintiff-Appellee,

v

NANCY MANTZ,

Defendant-Appellant.

Before: O'Connell, P.J., and White and Bandstra, JJ.

PER CURIAM.

UNPUBLISHED
April 7, 1998

No. 190354
St. Clair Probate Court
LC Nos. 93-093079 CK;
93-093080 CK;
94-094029 CK

No. 190384
St. Clair Probate Court
LC Nos. 93-093079 CK;
93-093080 CK;
94-094029 CK

In these consolidated cases, this Court is asked to review the probate court's findings of fact and conclusions of law in the accounting action brought by plaintiff and the court's decisions with respect to the award of costs and fees to defendant. We affirm.

The probate court did not clearly err in its findings of fact. A finding is said to be clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337, 445 NW2d 161 (1989). This Court will defer to the probate court on matters of credibility and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors. *Id.*; MCR 2.613(C). Plaintiff asks this Court to upset the probate court's decision because the record allegedly showed that defendant may have been duplicitous in the past. We decline to do so. This Court does not sit as a "super jury" for a relitigation of the facts. *Gleason v Sutter*, 350 Mich 292, 297; 86 NW2d 288 (1957).

Nor did the court err in its conclusion that defendant's support obligation is controlled by the circuit court's divorce and post-divorce orders. Parents are jointly and severally liable for the care and support of their minor children unless a court of competent jurisdiction modifies that duty. MCL 722.3; MSA 25.244(3). When the parents divorce, the duties of support are established by the circuit court. MCL 552.16; MSA 25.96. Further, we do not find clear error in the finding by the probate court that defendant did not use income from the trust to meet her court-ordered support obligations. *In re Powell Estate*, 160 Mich App 704, 710; 408 NW2d 525 (1987).

Next, plaintiff argues that the trial court improperly allowed parol evidence to be admitted to construe the language of the trust. We disagree and conclude that the probate court properly admitted the deposition testimony of the trustees. The trusts at issue in this case are Illinois trusts and, as determined by the probate court, are to be construed under Illinois law. If the trust is ambiguous with respect to the meaning of the grantor, then parol evidence may be used to determine the grantor's intent. *Egidi v Town of Libertyville*, 621 NE2d 615, 621 (Ill App, 1993). In this case, we agree with the probate court that the word "benefit" contained in the trust language was ambiguous. Thus, the probate court properly admitted evidence to discern the grantor's intent. Similarly, the court did not abuse its discretion in admitting a portion of a guardian ad litem's report. A statement offered to show the effect on a listener, rather than the truth of the matter asserted, is not hearsay. MRE 801; *People v Flaherty*, 165 Mich App 113, 122; 418 NW2d 695 (1987). The probate court admitted the portion of the document for the sole purpose of illustrating the knowledge of plaintiff regarding defendant's use of the trust income for many years before this litigation was commenced.

Plaintiff further asserts that the probate court should have awarded interest as part of the amount for which defendant was liable. The decision whether to award interest in an equitable action is reviewed for an abuse of discretion. *Cyranoski v Keenan*, 363 Mich 288, 294; 109 NW2d 815 (1961); *Reigle v Reigle*, 189 Mich App 386, 393; 474 NW2d 297 (1991). Given the nature of the damages in this case, we believe that the court made a fair decision.

Turning our attention now to defendant's appellate issues, we find that the probate court did not abuse its discretion in denying attorney fees to defendant. Denial of attorney fees in the "interest of justice" pursuant to MCR 2.405 is reviewed for an abuse of discretion. *Luidens v 63rd Dist Ct*, 219 Mich App 24, 37; 555 NW2d 709 (1996). Having considered the reasoning of the probate court in this case, we do not conclude that there was an abuse of discretion.

Finally, the probate court did not err in delaying the payment of costs to defendant until the trust corpus is distributed to the beneficiaries. An accounting is by its nature an equitable action, *Cyranoski, supra*, and a court in equity has flexibility in molding its relief according to the character of the case, *Farrell v Nutter*, 362 Mich 639, 648; 107 NW2d 770 (1961). Having reviewed this matter de novo, we do not conclude that we would have reached a different result had we occupied the lower court's position. *Schmude Oil Co v Omar Operating Co*, 184 Mich App 574, 582; 458 NW2d 659 (1990); see, also, *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997).

We affirm.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Richard A. Bandstra